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REMARKS

Claims 1-53 are pending in the present Application. Claims 1, 10, 17, 23, 30, 37, 52, and 53 have been amended. Support for the amendments to the claims can be found in the specification at paragraphs 18 and 19. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under Obviousness-type double patenting

Claims 1, 4, 7-10, 12, 15-17, 19, 21-23, 25, 27-30, 32, 34-35, 37, 39, 42-44, 52, and 53 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-27 of U.S. Patent No. 6,583,205 ('205).

Claims 1, 4, 7-10, 12, 15-17, 19, 21-23, 25, 27-30, 32, 34-35, 37, 39, 42-44, 52, and 53 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-15 of copending U.S. Patent Application Serial No. 10/427,278.

In response to these rejections two terminal disclaimers are submitted with this amendment.

Claim Rejections Under 35 U.S.C. § 102(b) and 103(a)

Claims 1-2, 4, 6, 8-10, 12, 14, 16-17, 19, 22, 23, 25, 28, 30, 32, 35-37, 39, 41, 43-45, 47, and 50-53 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 4,857,390 to Allen ('390).

Claims 3, 5, 11, 13, 18, 10, 24, 26, 31, 33, 38, 38, 40, 46, and 48 stand rejected under 35 U.S.C. § 103(a) as unpatentable over '390. In making the rejection the Examiner appears to have intended to cite another reference in combination with '390 but none was listed (see Page 5 of the Office Action).

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The independent claims have been amended to make more explicit the meaning of the term "expandable poly (arylene ether)/polystyrene blend". As discussed in paragraphs 18 and 19 of the specification, an expandable poly(arylene ether)/polystyrene blend is a blend in particulate (or pelletized) form that can subsequently be expanded and molded in a separate step. Thus it is important that the blowing agent stay stably dissolved, dispersed or dissolved and dispersed in the non-expanded composition at room temperature.

'390 is directed to a structural foam sheet that is foamed at the die (see figure 1) and does not teach or disclose an expandable composition in the form of a pellet as is instantly claimed. The closest disclosure of '390 to an expandable composition is the mixture of components in melt prior to exiting and expanding at the die. '390 explicitly teaches at Col. 1, lines 59-68 that the blowing agent is essentially insoluble in the resin at room temperature. '390 is clearly directed to a different problem as well as a different solution. As a consequence, '390 does not disclose every element of the claim. To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Similarly, for an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Applicants respectfully assert that the pending claims are neither anticipated nor obvious in view of the cited art because the cited art fails to teach all elements of the amended claims, namely that the expandable composition is in pellet form.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

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If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 50-1131.

Respectfully submitted,

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